

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional)  2673									
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>11/01/2010</u>  Signature <u>/Jamie Cameron/</u>  Typed or printed name <u>Jamie Cameron</u>	Application Number  10/790,459		Filed  03/01/2004								
	First Named Inventor  Warren B. Cope										
	Art Unit  2614		Examiner  Amal S. Zenati								
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top; padding-bottom: 10px;"><input type="checkbox"/> applicant/inventor.</td><td style="width: 50%; vertical-align: top; padding-bottom: 10px;"><u>/David J. Bovitz/</u> Signature</td></tr><tr><td style="vertical-align: top; padding-bottom: 10px;"><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td style="vertical-align: top; padding-bottom: 10px;"><u>David J. Bovitz</u> Typed or printed name</td></tr><tr><td style="vertical-align: top; padding-bottom: 10px;"><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>61,911</u></td><td style="vertical-align: top; padding-bottom: 10px;"><u>(720) 562-2280</u> Telephone number</td></tr><tr><td style="vertical-align: top; padding-bottom: 10px;"><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td style="vertical-align: top; padding-bottom: 10px;"><u>11/01/2010</u> Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant/inventor.	<u>/David J. Bovitz/</u> Signature	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<u>David J. Bovitz</u> Typed or printed name	<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>61,911</u>	<u>(720) 562-2280</u> Telephone number	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>11/01/2010</u> Date
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<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.											

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Warren B. Cope

Confirmation No.: 9953

Application No.: 10/790,459

Art Unit: 2614

Filed: 03/01/2004

Examiner: Amal S. Zenati

For: METHOD AND APPARATUS FOR TRANSFERRING SERVICES FOR A FIRST  
LOCATION TO A DIFFERENT LOCATION IN RESPONSE TO A PREDETERMINED  
EVENT

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Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

In response to the final Office Action dated 07/30/2010 and the Advisory Action dated 10/13/2010, the Applicant requests review of the Final Rejection in the above-identified application. No amendments are being filed with this request. A Notice of Appeal under 37 C.F.R. § 41.31(a)(1) is being filed herewith. The review is requested for the reasons provided in the following remarks.

## REMARKS

Claims 1-7, 9, 11-17, 19-24, 26, and 28-34 are pending. Claims 1-7, 9, 11-17, 19-24, 26, and 28-34 currently stand rejected. Claims 8, 10, 18, 25, 27, and 35 have been previously canceled. The Applicant respectfully requests consideration of the following remarks and allowance of claims 1-7, 9, 11-17, 19-24, 26, and 28-34.

### *35 U.S.C. § 103(a) Rejection over Elsey in view of Midwest Region*

Claims 1-7, 9, 16, 17, 19-24, 26, 33, and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Elsey (U.S. Patent No. 6,845,155) in view of Midwest Region (“Midwest Region: Primer for Local Number Portability,” Issue 2, p. 1-31, 7/27/1997). The final Office Action and the Advisory Action mischaracterize the reference of Elsey, representing clear error. The Applicant respectfully disagrees with the rejection for at least the following reasons.

### *Switch becomes disabled:*

It is respectfully asserted that the final Office Action mischaracterizes a *call center*, such as call center 1005 of Elsey, with a *switch*, such as switch 1003 of Elsey. In Elsey, switch 1003 routes calls to call center 1005, unless call center 1005 is out of order (Elsey, column 9, line 47). If *call center 1005* is out of order - not if switch 1003 is out of order - then *switch 1003* re-routes calls through another switch (switch 1009) to an alternate call center, such as call center 1007 (Elsey, column 9, lines 36-50). Claim 1 recites a much different configuration.

Claim 1 recites in part, “establishing a disaster recovery plan to terminate the at least one phone number at a second switch in response to the occurrence of a predetermined event, wherein the predetermined event is *when the first switch becomes disabled....*” If switch 1003 becomes disabled in Elsey, then *switch 1003* could not route calls intended for call center 1005 to switch 1009, and Elsey fails for its intended purpose. Thus, Elsey does not teach or suggest at least “establishing a disaster recovery plan to terminate the at least one phone number at a second switch in response to the occurrence of a predetermined event, wherein the predetermined event is *when the first switch becomes disabled....*” as recited in claim 1.

Local copy of local number portability database directs to second switch:

Furthermore, claim 1 recites “in response to the occurrence of the predetermined event, programming a local copy of a local number portability database to direct communications for the at least one phone number to the second switch...”

In Elsey, switch 1009 consults network processor 1011 and call routing server 108 to find an alternate call center *after the call has already been routed to switch 1009 by switch 1003* (Elsey, column 9, lines 50-59). Thus, network processor 1011 or call routing server 108 of Elsey are not programmed to direct communications for the at least one phone number *to the second switch* as recited in claim 1. Instead, network processor 1011 or call routing server 108 of Elsey instruct switch 1009 to route the call to *a call center*, not another *switch*. Therefore, Elsey does not teach or suggest at least “in response to the occurrence of the predetermined event, programming a local copy of a local number portability database to direct communications for the at least one phone number to the second switch...” as recited in claim 1.

All phone numbers ported to second switch:

Additionally, claim 1 recites “all the phone numbers actively terminated by the first switch are ported to the second switch...” As discussed above, *call center 1005* of Elsey is different from *switch 1003* of Elsey. Phone numbers handled by switch 1003 of Elsey are not *ported* to another switch, as discussed in claim 1. Instead, switch 1003 still handles the same calls after call center 1005 is out of order, and switch 1003 routes these calls to a different switch, such as switch 1009 (Elsey, column 9, lines 36-50). The calls handled by switch 1003 in Elsey are not *ported* to switch 1009, as recited in claim 1, and are instead *still routed* by switch 1003. Thus, switch 1003 remains operational in Elsey, even though call center 1005 may be out of order, and phone numbers are not *ported* to another switch as recited in claim 1.

The Office Action then attempts to combine Elsey with Midwest Region to attempt to overcome the shortcomings of Elsey (Office Action page 3). However, Midwest Region also does not teach or suggest at least the above cited portions of claim 1. Instead, Midwest Region teaches of an originating switch receiving a call request to a dialed phone number and responsively querying a database for an *alternate phone number prefix* (LRN) to direct a phone call to a different recipient switch when customers switch service providers or move geographic locations (Midwest Region, page 5, steps 2-3). It should be noted that the *alternate phone*

*number prefix* (LRN) of Midwest Region identifies the *recipient switch* and thus is *not* the *dialed phone number received at the originating switch*. The recipient switch then *replaces* the incoming LRN digits with the dialed phone number (as stored in the GAP) to complete the call (Midwest Region, page 5, steps 6-7). Although Midwest Region discusses maintaining the same dialed number for a user to reach the dialed number at different switch (Midwest Region, page 5), Midwest Region operates similarly to Elsey, where dialed numbers are *redirected to alternate routes*. Moreover, Midwest Region teaches associating the dialed number with an *alternate prefix* to route the call to a different switch. Thus, Midwest Region does not teach or suggest “in response to the occurrence of the predetermined event...*all the phone numbers actively terminated by the first switch are ported to the second switch...*” as recited in claim 1. Therefore, the inclusion of Midwest Region does not overcome the shortcomings of Elsey, nor render such shortcomings obvious.

Based on the above comments, Elsey and Midwest Region, neither separately, nor in combination, teach or suggest at least the above recited portions of claim 1. Thus, the Applicant contends that independent claim 1 is allowable, and such indication is respectfully requested. Independent claim 19 contains limitations similar to claim 1 and is therefore respectfully asserted to be allowable over the art of record for similar reasons as claim 1.

While separately allowable over the art of record, dependent claims 2-7, 9, 16, 17, 20-24, 26, 33, and 34 depend from otherwise allowable independent claims. The Applicant therefore refrains from a discussion of the rejection of claims 2-7, 9, 16, 17, 20-24, 26, 33, and 34 under 35 U.S.C. § 103(a) for the sake of brevity.

Thus, in light of the discussion above, the Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejections of claims 1-7, 9, 16, 17, 19-24, 26, 33, and 34.

#### *Further 35 U.S.C. § 103(a) Rejections*

Claims 11, 12, 28, and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Elsey (U.S. Patent No. 6,845,155) in view of Midwest Region (“Midwest Region: Primer for Local Number Portability,” Issue 2, p. 1-31, 7/27/1997) and Ward (U.S. Patent No. 6,654,451). Claims 13-15 and 30-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Elsey (U.S. Patent No. 6,845,155) in view of Midwest Region (“Midwest Region: Primer for Local Number Portability,” Issue 2, p. 1-31, 7/27/1997) and Gibson (U.S.

Patent No. 7,076,045). The Applicant respectfully disagrees with the rejections for at least the following reasons.

Claims 11-15 depend from independent claim 1 and claims 28-32 depend from independent claim 19, thus incorporating the limitations of the associated independent claims. Therefore, the Applicant respectfully asserts that claims 11-15 and 28-32 are allowable for at least the reasons indicated above in support of claims 1 and 19, and such indication is respectfully requested.

Thus, in light of the discussion above, the Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejections of claims 11-15 and 28-32.

### **CONCLUSION**

The claims in their present form are allowable over the art of record. Therefore, the Applicant respectfully solicits their allowance.

The Applicant hereby authorizes the Office to charge Deposit Account No. 21-0765 the appropriate fee under 37 C.F.R. § 41.20(b)(1) for the Notice of Appeal filed herewith. The Applicant believes no additional fees are due with respect to this filing. However, should the Office determine additional fees are necessary, the Office is authorized to charge Deposit Account No. 21-0765 accordingly.

Respectfully submitted,

/David J. Bovitz/

**SIGNATURE OF PRACTITIONER**

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